

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

MARK APPELGREN, Pro Se

Plaintiff,

v.

CITY OF FORT LEE et al.,

Defendants.

No. 2:24 – CV – 08013 – MCA – MAH

CIVIL ACTION

DATED: November 12, 2024

MOTION FOR LEAVE TO FILE OUT OF TIME

NOW COMES Plaintiff Mark Appelgren, pro se, and respectfully moves this Honorable Court for permission to file his Brief in Opposition to Defendant's Motion to Dismiss out of time. In support of this motion, Plaintiff states as follows:

Background

Plaintiff's response to Defendant's Motion to Dismiss was due on October 28, 2024, as indicated in Defendants' Notice of Motion dated October 3, 2024. Plaintiff inadvertently missed this deadline due to unfamiliarity with the court's local rules regarding response deadlines and formatting requirements.

Explanation for Delay and Steps Taken to Comply

As a pro se litigant, Plaintiff initially did not fully understand the specific requirements for the timing and format of responsive filings under this Court's local rules. Plaintiff's unfamiliarity with these procedural standards inadvertently led to a delay in filing the response.

Upon realizing that the deadline had passed, Plaintiff took the time to review and research the local rules thoroughly to understand the response timeline, required formatting, and other

procedural details. Plaintiff discovered that not only was there a specific deadline but also that certain formatting standards were required to ensure compliance with the court's rules. Once aware of these requirements, Plaintiff acted promptly to complete and finalize his opposition brief in the correct format, ensuring it met the necessary standards.

Commitment to Compliance Moving Forward

Plaintiff has now familiarized himself with the procedural requirements and deadlines mandated by this Court and is committed to strict compliance in all future filings. Plaintiff understands the importance of adhering to these procedural rules and assures the Court that any future requests for extensions or clarifications will be sought well in advance to avoid any further delays.

Legal Support for Leniency Request

The Supreme Court and federal appellate courts have consistently recognized that pro se litigants are entitled to a degree of leniency in procedural matters, especially where procedural errors are inadvertent and do not prejudice the opposing party. In *Haines v. Kerner*, 404 U.S. 519 (1972), the Supreme Court held that pro se pleadings are to be liberally construed and held to less stringent standards than those drafted by attorneys. Similarly, in *Patterson v. U.S. Postal Serv.*, 183 F. App'x 389, 390 (5th Cir. 2006), the court acknowledged the appropriateness of granting leniency to pro se litigants when they make genuine attempts to comply with procedural rules.

Additionally, the principles established in *Foman v. Davis*, 371 U.S. 178, 182 (1962) and *Burnett v. New York Central R.R. Co.*, 380 U.S. 424 (1965) favor adjudicating claims on their merits rather than dismissing them solely based on technical procedural defaults. These cases

emphasize that procedural rules should not operate as a barrier for litigants who act in good faith to correct any inadvertent errors.

Plaintiff respectfully requests that the Court apply these principles in granting leniency for this late filing, allowing the case to proceed on its merits rather than being dismissed due to an inadvertent procedural oversight.

Request for Leniency and Fair Consideration of Merits

Plaintiff acknowledges that this late filing should have been avoided, and while unable to seek prior permission, Plaintiff now asks the Court's forgiveness and requests that his filing be accepted so that the case may proceed on its merits. Plaintiff assures the Court that moving forward, he will promptly seek any extensions as needed and will ensure compliance with all court rules.

WHEREFORE, Plaintiff Mark Appelgren respectfully requests that this Honorable Court grant him leave to file his Brief in Opposition to Defendant's Motion to Dismiss and accept the late filing as timely.

Enclosure: Exhibit A – Plaintiff's Brief in Opposition to Defendant's Motion to Dismiss

DATED: November 12, 2024

Respectfully submitted,

/s/ Mark Appelgren

Mark Appelgren, Pro Se

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CERTIFICATE OF SERVICE

I, Mark Appelgren, hereby certify that a true and correct copy of the foregoing Motion was provided to Defendants' Counsel of Record on this 12th day of November 2024, via certified mail and Transmission of Notices of Electronic filing granted by CM/ECF to Additionally, a copy of this Motion to the Court was filed via electronic mail ecfhelp@njd.uscourts.gov.

Dated: November 12, 2024

Respectfully submitted,

/s/ Mark Appelgren

Mark Appelgren, Pro Se

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CC: Counsel of Record

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